
IN THE
United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 15,371

IRMGARD SANTOS, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

**Petition to Review Decision of the Tax Court of the
United States**

PETITIONER'S BRIEF

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INDEX

	Page
JURISDICTIONAL STATEMENT	1
Jurisdiction of the Tax Court	1, 2
Jurisdiction of the Court of Appeals	2
QUESTION PRESENTED	2, 3
STATUTES AND REGULATIONS INVOLVED	14, 15
STATEMENT OF THE CASE	3, 4, 5, 6, 7
SPECIFICATION OF ERRORS	7
ARGUMENT	
I. The Petitioner, Irmgard Santos, is not a Transferee of Lawrence Santos	8
(a) The money received by the petitioner, Irmgard Santos, was her own money and not the money of the petitioner's husband, Lawrence Santos	9
(b) The Government has failed to prove that the petitioner, Irmgard Santos, is a transferee of Lawrence Santos	10
(c) The decisions hold that where a surviving spouse receives property held in joint tenancy or where spouses divide community property, there is no transferee liability	11
CONCLUSION	12, 13

TABLE OF CASES

<i>Irvine v. Helvering</i> , (CA 8, 1938), 99 F. (2d) 265	12
<i>Mills, Commissioner v.</i> , (CA 9, 1950), 183 F. (2d) 32 ...	12
<i>Parsons v. Anglim</i> , (CA 9, 1944), 143 F. (2d) 534	12
<i>Rickenberg v. Commissioner</i> , (CA 9, 1949), 177 F. (2d) 114	12
<i>Shelton v. Gill</i> , (CA 4, 1953), 202 F. (2d) 503	11
<i>Tooley v. Commissioner</i> , (CA 9, 1941), 121 F. (2d) 350	11

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JURISDICTIONAL STATEMENT

Jurisdiction of the Tax Court

On October 15, 1952, the Commissioner of Internal Revenue sent to the petitioner, Irmgard Santos, a Notice of Deficiency, in which he determined that the petitioner, Irmgard Santos, as the transferee of assets of Lawrence Santos, her husband, was liable to the extent of \$68,287.90 on account of a deficiency in income tax for the years 1942

to 1946, inclusive, of the said Lawrence Santos. (R. 3) Thereafter, on January 8, 1953, the petitioner duly filed an appeal from said determination with the Tax Court of the United States in accordance with § 272 and § 311 of the Internal Revenue Code of 1939. The case was tried before the Tax Court on July 23, 1954. The Tax Court promulgated its Findings of Fact and Opinion (R. 46) on June 18, 1956, and entered its Decision on the same day, ordering and deciding that the petitioner was liable as a transferee of the assets of Lawrence Santos in the amount of \$68,287.90 on account of income taxes of Lawrence Santos for the taxable years 1943 to 1946, inclusive, together with interest as provided by law. (R. 65, 66)

Jurisdiction of the Court of Appeals

A Petition for Review was filed on September 7, 1956, to review the decision entered by the Tax Court on June 18, 1956. Jurisdiction is conferred upon this Court by Sections 1141 and 1142 of the Internal Revenue Code of 1939 and Sections 7482 and 7483 of the Internal Revenue Code of 1954.

QUESTION PRESENTED

Petitioner and Lawrence Santos were husband and wife during the entire period here involved and both were employed. From the time of their marriage in 1928, they pooled their earnings to purchase jointly-owned homes and to finance Lawrence Santos' business. Under the Community Property Law of Hawaii, which was in effect from June 1, 1945, to June 30, 1949, petitioner's share of the community income thus earned was \$154,976.51 and her tax liability thereon was \$70,289.91. Some time prior to March 27, 1952, the Commissioner of Internal Revenue made a jeopardy assessment and recorded liens against petitioner for the tax on her share of the community income and on her separately reported income for the years 1943 to 1947, inclusive.

Petitioner and her husband quarreled frequently because of her insistence that he pay to her share of the income. Accordingly, Lawrence Santos in 1948, 1949, and 1950 purchased and delivered to the petitioner as a partial payment of petitioner's share of the said income, certain cashiers' checks which were later converted into United States Bonds. \$70,000 of the face value of these bonds were sold in 1952 for \$68,287.90 and the entire proceeds paid to representatives of the Commissioner in full satisfaction of the claims under the jeopardy assessment for income taxes on petitioner's share of the income. The liens on record against petitioner were released when this payment was made.

The Commissioner then asserted a deficiency of \$68,287.90 (the amount paid the Commissioner) against petitioner on the ground that she was a transferee of the assets of Lawrence Santos and made a jeopardy assessment of the said amount. The Tax Court, with two Judges dissenting, affirmed.

The question for decision is:

Is the petitioner liable as a transferee of the assets of Lawrence Santos because she received from him a sum of money representing a portion of her share of the community income and her separately reported income and used that money to pay the tax assessed against her because of earning the said money?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved appear in the Appendix hereto at pages 14, 15.

STATEMENT OF THE CASE

The petitioner and Lawrence Santos were married in 1928. At that time they were both employed, petitioner at Honolulu Gas Company and her husband at Union Trust

Company. They continued to work in their respective jobs after their marriage. (R. 47, 86, 87, 119) Whatever petitioner earned she turned over to Lawrence Santos. Petitioner worked until 1941. (R. 117) In 1932, petitioner and her husband bought their first home in Honolulu out of their joint earnings. Title was taken as joint tenants. (R. 34, 115) Thereafter, they sold their first home and bought another home. Still later they sold the second home and bought a third home. In each instance, title was taken as joint tenants and both petitioner and her husband signed the mortgages. Whatever petitioner earned was turned over to her husband and applied on the mortgages. (R. 116, 117)

In 1937 Lawrence Santos gave up his position and organized Persans, Ltd., to operate a retail shoe store. (R. 34) The \$5,000 invested in Persans, Ltd. was secured by mortgaging the home held as joint tenants. (R. 87) The mortgage was paid from the joint checking account in which both petitioner and her husband's checks were deposited. (R. 118) Petitioner worked for Persans, Ltd. without compensation on Saturdays and on other days after she had completed her regular job. (R. 34, 47)

In 1942 Lawrence Santos purchased Manufacturers' Shoe Store in Honolulu for \$50,000.00. The purchase was financed as follows: Persans, Ltd. borrowed \$50,000 from a bank pledging its assets as security. Persans, Ltd. then loaned the \$50,000 to Lawrence Santos who paid it to the seller of Manufacturers' Shoe Store. Persans, Ltd. was liquidated and the proceeds in liquidation, (\$43,750.35) were paid to Lawrence Santos. (R. 48, 49)

On July 1, 1944, Lawrence Santos created an irrevocable trust by transferring to Hawaiian Trust Company, Limited, the sum of \$70,000.00. The beneficiaries of the trust were the two children of petitioner and Lawrence Santos. The trust then invested the \$70,000 in a 40 percent interest

in a limited partnership formed to carry on the business of Manufacturers' Shoe Store. Lawrence Santos transferred assets of the old Manufacturers' Shoe Store with a book value of \$105,000, to the new partnership for a 60 percent interest therein. (R. 49)

On March 1, 1947, Manufacturers' Shoe Company, Limited, was incorporated to take over the assets and liabilities of the limited partnership. Capitalization was \$350,000, with Lawrence Santos receiving stock with a par value of \$210,000 and the trust \$140,000. (R. 50)

In the early part of 1948, Lawrence Santos requested Cameron and Johnstone, auditors for the corporation and for the limited partnership, to determine what portion of the capital stock of \$210,000 issued to him at the incorporation of Manufacturers' Shoe Company, Limited, represented earnings since June 1, 1945, i. e., the date of the adoption by Hawaii of the Community Property Law. Cameron and Johnstone made an examination and, on April 5, 1948, advised Lawrence Santos that \$105,000 out of the \$210,000 was community property and that his wife would be entitled to receive stock of the par value of \$52,500 in recognition of her community property interest in the earnings of the business from June 1, 1945 to February 28, 1947. On or about April 5, 1948, Lawrence Santos then transferred to petitioner, as of March 1, 1947, capital stock of Manufacturers' Shoe Company of the par value of \$52,500 out of his share of the capital stock of the company, leaving him stock of the par value of \$157,500. (R. 51)

Petitioner's share of the community income of herself and Lawrence Santos for the period from June 1, 1945, (commencement of community property), to February 28, 1947 (the date of the organization of the corporation), was as follows:

June 1, 1945-December 31, 1945	\$ 15,621.92
January 1, 1946-December 31, 1946	54,400.31
January 1, 1947-February 28, 1947	41,564.78

Total \$111,587.01

Petitioner's share of the community income of herself and husband for the period from March 1, 1947, to July 1, 1949 (the end of community property), was as follows:

March 1, 1947-December 31, 1947	\$ 11,610.60
January 1, 1948-December 31, 1948	21,063.38
January 1, 1949-June 30, 1949	10,715.52

Total \$ 43,389.50

Petitioner's Federal income tax liability on her community income as aforesaid for the taxable years 1945, 1946, 1947, 1948, and 1949 was \$5,240.96, \$28,257.97, \$27,384.49, \$6,165.16 and \$3,241.33, respectively. (R. 50-52)

Petitioner contended that she had an interest in the business of Lawrence Santos because of her contributions to it. Also, she insisted that she should be given her share of the community property. (R. 88, 89, 90, 91, 113, 120, 121, 122, 198) The situation between petitioner and her husband became so strained as a result of her demands that petitioner left Honolulu and went to live on the mainland where she filed a suit for separate maintenance. (R. 51, 92, 134).

Because of petitioner's insistence that she receive her share of the business and community property, Lawrence Santos transferred to her the \$52,500 par value stock in Manufacturers' Shoe Company, Limited. (R. 51)

In addition, Lawrence Santos in 1948, 1949 and 1950 purchased cashiers' checks, payable to Lawrence Santos and/or Irmgard Santos in the aggregate amount of \$82,272.67 and delivered them to petitioner. (R. 52) In November 1950, Lawrence Santos received the cashiers'

checks from petitioner and with them purchased United States Treasury Bearer Bonds in the principal amount of \$80,000. The bonds were delivered to the petitioner. One \$10,000 bond was sold in April, 1952, and the proceeds went to pay the joint Territorial taxes of petitioner and her husband. In March, 1952, petitioner sold the remaining bonds in the principal amount of \$70,000 for \$68,287.90. This \$68,287.90 was paid to the Collector of Internal Revenue in payment of petitioner's individual income tax liability because of her share of community income and her separately reported income for the years 1943 to 1947, inclusive, and the tax liens on account thereof were discharged. (R. 41, 53)

On October 15, 1952, the Commissioner issued a notice of deficiency determining that petitioner owed \$68,287.90 (the amount she had paid the Collector as shown above) as a transferee of the assets of Lawrence Santos. (R. 34) A jeopardy assessment was made of the alleged deficiency of \$68,287.90. Appeal was taken to the Tax Court, which affirmed the action of the Commissioner. (R. 46) Judge Murdock, who is now Chief Judge of the Tax Court, and Judge Johnson dissented. (R. 63)

SPECIFICATION OF ERRORS

The Tax Court of the United States erred:

1. In failing to hold that the money involved was the individual property of petitioner and was used by her to pay her individual income taxes.
2. In holding and deciding that petitioner was a transferee of the assets of Lawrence Santos in the amount of \$68,287.90.
3. In holding that Lawrence Santos while insolvent gratuitously transferred property of a value of \$68,287.90 to petitioner.

4. In determining that the Commissioner had met the burden of proof to show transferee liability.

5. The Tax Court's opinion and decision are not supported by the evidence.

ARGUMENT

I. THE PETITIONER, IRMGARD SANTOS, IS NOT A TRANSFEREE OF LAWRENCE SANTOS

The Tax Court opinion is unique in that it does not cite any decisions to support its conclusion. This was probably due to the fact that there are no adjudicated decisions on this exact point.

Stripped of superfluous facts, the question to be decided in this case is simple. Briefly, the facts are that petitioner received certain money from her husband in partial satisfaction of her claim to her portion of their community income and her separately reported income. This money was used by petitioner to pay the income taxes assessed against her on the said income.

The sole question to be decided is:

Is the petitioner liable as the transferee of the assets of her husband because of the receipt and use of the money as indicated?

The decision of the Tax Court should be reversed on the following grounds:

(1) The money involved was petitioner's individual money and not the money of Lawrence Santos;

(2) The Government failed to prove transferee liability; and

(3) Decisions of this and other courts in several cases have decided the basic question here involved as not resulting in transferee liability.

(a) **The money received by the petitioner, Irmgard Santos, was her own money and not the money of the petitioner's husband, Lawrence Santos.**

The money, here involved, was the individual property of Irmgard Santos. The Tax Court's findings fully sustain this position. The evidence in the record removes any possible doubt that the property received by the petitioner was her separate property. The Tax Court's findings specifically state that petitioner had community income of \$154,976.51 and that the income tax thereon was \$70,289.91. (R. 52) The findings further shows that, when Lawrence Santos purchased the cashiers' checks in 1948, 1949, and 1950, he had assets in excess of \$200,000. (R. 54) No claim for additional taxes was made against Lawrence Santos until long after the cashiers' checks were purchased and delivered to petitioner. (R. 54)

Possibly, the best argument that can be made on this point is in Chief Judge Murdock's dissent in the case at bar which states, in part, as follows: (R. 64)

"The giving of the cashier's checks by Lawrence to the petitioner during the period when the community property laws were in effect would appear to be merely the receipt by the petitioner of a part of her share of community property rather than transfers of the separate property of Lawrence. Most of the checks were given during that period. I would not think that any transferee liability would result if the petitioner merely received a part of her share of the community funds during the period when the community property laws were in effect and eventually used those funds to pay her own taxes on her share of the community income."

In the present case \$80,000 face value of bonds were purchased with the cashiers' checks delivered to petitioner by her husband. One \$10,000 bond was sold in April 1952, and the proceeds used to pay the joint Territorial taxes of petitioner and her husband. The proceeds from the remaining \$70,000 in bonds were used to pay the

individual income taxes of petitioner. For some unexplained reason, the Commissioner did not assert a transferee liability on account of the proceeds from the \$10,000 bond although it must have been that the taxes paid were on the same income as the Federal taxes satisfied by payment of the proceeds of the \$70,000 in bonds.

The findings and the evidence in the case at bar clearly show (a) that the money which petitioner received was petitioner's money, (b) that the Commissioner recognized this fact by assessing the tax against petitioner individually and, (c) by releasing the liens after payment of the amount here involved in satisfaction of her individual tax liability.

(b) The Government has failed to prove that the petitioner, Irmgard Santos, is a transferee of Lawrence Santos.

The statute places the burden of proving transferee liability on the Commissioner. (See Appendix, p. 15) Any reasonable reading of the Tax Court's Findings of Fact shows that the Commissioner has not met that burden. The evidence makes this even more apparent but, for the purpose of this appeal, it is not necessary to go beyond the Tax Court's Findings of Fact.

The Government wholly failed to produce any evidence to show that the cashiers' checks were purchased with the separate funds of Lawrence Santos. It would have been a simple matter to have adduced proof on this point. Failure to do so gives rise to the inference that proof would have been unfavorable to the party with the burden of proof. The cashiers' checks were payable to Lawrence Santos and/or Irmgard Santos. A reasonable inference from the facts is that the checks represented community funds. This was the conclusion of Chief Judge Murdock in his dissenting opinion.

The findings are silent as to whether the community income was exhausted by payment of living expenses and community debts. However, the Tax Court opinion, (p. 59)

says this was so. There is absolutely no evidence to support such a statement. In addition, the Tax Court opinion (p. 59) says that the petitioner had the burden of going forward with evidence as to the living expenses and the source of their payment. Such a statement does violence to the statute which places the burden of showing transferee liability on the Government. It wholly failed to carry this burden. The Tax Court erred in placing this burden of proof on the petitioner.

The statute imposes upon the Commissioner the burden of showing that the money here involved was the property of Lawrence Santos. This is so because it is fundamental that "the mere distribution of assets does not of itself impose transferee liability upon the distributee because a transferee is one who takes the property of *another* without full, fair and adequate consideration; * * *". (Emphasis supplied) *Shelton v. Gill*, (CA 4, 1953), 202 F. (2d) 503, 506.

(c) The decisions hold that where a surviving spouse receives property held in joint tenancy or where spouses divide community property, there is no transferee liability.

This Court has decided substantially the same question here involved. In *Tooley v. Commissioner*, (1941), 121 F. (2d) 350, 27 A.F.T.R. 686, the Commissioner determined that a joint tenant was the transferee of her deceased husband. The property involved was corporate stock which, although held by Mrs. Botts and her deceased husband as joint tenants, was administered in the estate of Mr. Botts. The probate court purported to distribute the stock to Mrs. Botts. This Court stated: (p. 360)

"We hold * * * that the shares were not the property of Mr. Botts' estate, were not transferred to Mrs. Botts from that estate * * *. Not only has the Commissioner failed to maintain his burden of proof that the shares were transferred to Mrs. Botts by the decree of distribution, but it is affirmatively shown to the contrary."

The case at bar is like the *Tooley* case in that the money being claimed was at all times the petitioner's money. To the same effect as the *Tooley* case, see *Parsons v. Anglim*, (CA 9, 1944) 143 F. (2d) 534, and *Irvine v. Helvering*, (CA 8, 1938), 99 F. (2d) 265.

Other cases decided by this circuit and dealing with the general question are *Rickenberg v. Commissioner*, (1949), 177 F. (2d) 114, certiorari denied 338 U.S. 949, and *Commissioner v. Mills*, (1950), 183 F. (2d) 32. In the *Rickenberg* case, a husband and wife transferred title to their community property to themselves as tenants in common. Upon the death of the husband, the Commissioner treated the transfer as in contemplation of death and asserted an estate tax. This Court reversed the Tax Court, which had sustained the action of the Commissioner.

The *Mills* case involved a situation where the Commissioner asserted a gift tax when a married couple in California divided their community property. This Court said there was no transfer of an interest in property and affirmed the Tax Court decision that there was no gift tax due. It seems to petitioner that the same basic principles apply in the case at bar.

These cases involve essentially the same issue as the one involved in this case. The petitioner received a part of her own separate property from her husband. Since the property received by the petitioner was her own property, she cannot be a transferee of her husband by reason of the receipt of such property.

CONCLUSION

The petitioner received from her husband a part of her share of community property and her separately reported income. This was the petitioner's separate property. She used the money thus received to pay her separate taxes on her community income and her other separate income. The Commissioner has asserted transferee liability against

the petitioner for the tax liability of petitioner's husband by reason of said transfer to petitioner of her own property. The Tax Court's findings and the record in the Tax Court proceedings do not contain any evidence to support this asserted transferee liability against petitioner. The asserted transferee liability must fail because the Commissioner has not sustained the burden of proof imposed upon him by statute.

The decision of the Tax Court sustaining the Commissioner's determination of transferee liability should be reversed.

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APPENDIX

Statutes and Regulations Involved

Internal Revenue Code of 1939:

“Sec. 311. (a) Method of Collection.—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

“(1) Transferees.—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

“Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.”

Regulations 111:

“Sec. 29.311-1. Claims in cases of transferred assets. (a) The amount for which a transferee of the property of a taxpayer is liable, at law or in equity * * * in respect of any income tax imposed by chapter 1, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee * * * and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by chapter 1, except as hereinafter provided. The provisions relating to delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with The Tax Court of the United States, and the filing of a petition for review of the Tax Court's decision, are

included in the sections of the Internal Revenue Code (and regulations pertaining thereto) relating to deficiencies in tax imposed by chapter 1.

Sec. 1119. Provisions of Special Application to Transferees.

“(a) Burden of Proof. In proceedings before the Tax Court the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.”

